whether the debtor intended a preference or not so long as the creditor is innocent. In either case, it is equally within Sec. 60*a*. Likewise, there is no less inequality in the distribution. In fact, we fail to find any argument showing the innocent creditor's higher equity when the debtor undesignedly prefers him.

Strictly speaking, the payment might be much less than the creditor would receive were he to return the money, prove his whole claim, and take his *pro rata* share. Not until this apportionment is made among the creditors can it be said that the payment gives him a greater percentage of his claim; and if that cannot be asserted, how is he, within the meaning of Sec. 60*a*, a preferred creditor? If he is not such, why should he not be allowed, at least, an equal percentage of his debt, for Sec. 57*g* does not then apply to him? As he must by the act prove or not prove the remainder of his claim, the Courts, realizing the inequality in allowing him to prove, construe the words in Sec. 60*a*, defining preference as "a transfer of property," "the effect of which will enable any one creditor to obtain a greater percentage of his debt," to mean that, if the creditor insist on the transfer, and then prove the remainder of his claim, he would be getting a greater percentage and would become a preferred creditor, within Sec. 60*a*. Thus, in order to prevent him from becoming a preferred creditor, they really treat him as such, and apply to him Sec. 57*g*.

But the creditor to whom money has been paid by a debtor, at the time insolvent, may return this money and prove his whole claim. He, consequently, has the privilege of judging for himself as to which method would yield him the larger proportion, and this certainly more nearly approaches an equitable distribution than would result were the creditor to prove the remainder of his claim, and also retain that which, after such a proof of claim, would undoubtedly constitute a preference under Secs. 60*a* and 57*g*.

EFFECT OF MODERN LEGISLATION ON TENANCY BY THE ENTIRETY.—Such tenancy arises at common law when a conveyance is made to husband and wife during coverture, which, if made to two strangers would create a joint tenancy. Its peculiarities arose from the identity which the common law conceives to exist between husband and wife (Littleton, Sect. 291). In such tenancy a husband cannot bar the wife's right by survivorship in any part.—*Doe v. Parret* (5 T. R., 652 at 654). They are accordingly said to hold *per tout et non per my* (Chailis' Real Prop., p. 304), so that partition cannot be made of the estate (1 Prest. Est., 135). Lord Coke does not use the phrase "by entireties." He speaks of joint estates where "the husband and wife shall have no moieties"—a kind of inseverable joint tenancy. The earliest American edition of Blackstone makes no mention of tenancy by the entirety, though what is apparently a subsequent insertion (Bk. II., p. 182) is often referred to, and Chancellor Kent in a note (IV. Kent Com. 363) says that "Mr. Ram, in his Outline of Tenure and Tenancy (pp. 170–174), differs

from all the great property lawyers in saying this is a species of joint tenancy."

It would seem natural that a tenancy so nearly related to joint-tenancy would have disappeared after the legislation directed against the latter. It would surely seem that the Married Women's Acts would so far destroy the fictitious identity of husband and wife, as to eliminate tenancy by the entirety, *Mander* v. *Harris* (24 Ch. Div., 222); *Thornley* v. *Thornley*, 1893, 2 Ch., 229. The American courts, however, have not generally so held (1 Wash. R. Prop., Chap. XIII). The New York cases have been particularly interesting. In *Meeker* v. *Wright* (76 N. Y., 262), the Court was of opinion that the status of coverture had been so far changed as to destroy tenancy by the entirety. On this dictum *Feely* v. *Buckley* (28 Hun, 451), and other cases, were decided, but were overruled by *Bertles* v. *Nunan* (92 N. Y. 152), which held that when husband and wife were grantees of a freehold, they took as tenants of the entirety. Zorntlein *v.* Bram (100 N. Y. 10) held that in such case the grantee from the wife had no claim whatever as against a subsequent grantee from the husband and wife jointly. In *Price* v. *Pestka* (54 App. Div., 59), decided Nov. 10, 1900, the Court said that husband and wife took as tenants of the entirety, notwithstanding §56 N. Y. Real Prop. Law, which declared that "every estate granted or devised to two or more persons in their own right shall be a tenancy in common unless expressly declared to be in joint tenancy."

The tenancy seems to have been destroyed in *England, Canada, Ala., Me., Mass., Minn., Miss, and N. H.*, though still remaining in *Ark., D. C., Ind., Kansas, Md., Mich., Mo., N. J., N. Y., N. C., Ore., Pa., S. C., Tenn., Vt.*, and *W. Va.*

CORPORATIONS—VOTING TRUSTS.—In *Taylor* v. *Griswold* (2 J. S. Gr., 222), 1833, the Court denied the right of a stockholder to vote by proxy, unless power to do so had been expressly or impliedly conferred by the Legislature, on the ground that each stockholder is expected to exercise his individual judgment. In *Cone* v. *Russell* (48 N. J. Eq., 208), 1891, this principle was applied to a proxy irrevocable for five years, but great stress was laid on the fact that the object to be attained was against public policy, referring to *Woodruff* v. *Wentworth* (133 Mass., 309), 1882, where an ordinary contract between two stockholders for a similar purpose was held void. *White* v. *Tire Co.* (52 N. J. Eq., 178), 1894, was an agreement to transfer stock to a trustee for ten years in exchange for certificates of deposit, the trustee to vote as one of the beneficial owners should direct. Upon transfer by the latter of his beneficial interest the agreement was held void as to the transferee, it being against public policy for one without interest or title to vote the stock (citing *Shepang Voting Trust Case* (60 Conn., 553), 1891, at pages 580, 587. In *Clowes* v. *Miller* (see RECENT DECISIONS) the holding was substantially the same, the agreement being upheld only until the transfer, but a distinction was expressly drawn between